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IN THE DISTRICT COURT OF SAN PETE COUNTY  
STATE OF UTAH

CARBON CANAL COMPANY, et al,

Plaintiffs,

Vs.

COTTONWOOD-GOOSEBERRY  
IRRIGATION COMPANY, et al,

Defendants.

AMENDED JUDGMENT

Civil No. 5357

The above entitled action came on regularly for trial before the Court on the 8th day of March, 1965, M. J. Skeen, Stanley V. Littizette and Luke Pappas appearing as counsel for Plaintiffs; Arthur H. Nielsen appearing as counsel for Defendant, Cottonwood-Gooseberry Irrigation Company, and Dallin W. Jensen, Assistant Attorney General, appearing as counsel for Defendant Wayne B. Criddle, State Engineer. Said matter having been tried without a jury and thereafter submitted to the Court upon oral argument and written briefs; and the Court being fully advised in the premises; and having made and entered its Findings of Fact and Conclusions of Law; and the Plaintiffs having filed Objections thereto and proposed certain findings and Conclusions; and the Court having heard the arguments of the respective parties and having made and entered Amended Findings of Fact and Conclusions of Law;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED;

1. Cottonwood-Gooseberry Irrigation Company has appropriated and beneficially used since 1869 and is presently entitled to collect



and divert through its existing storage reservoirs and feeder canal system from May 15 to September 5 of each year from the upper drainage areas of Boulger Creek and Gooseberry Creek located and situated in Sections 26, 35, and 36, Township 13 South, Range 5 East; Section 31, Township 13 South, Range 6 East; Sections 1, 2, and 12, Township 14 South, Range 5 East; and Sections 6 and 7, Township 14 South, Range 6 East, Salt Lake Base and Meridian, with the right to store said waters in said reservoirs located in said drainage area and to divert and transmit the same, subject to the conditions hereinafter set forth, by transmountain diversion for irrigation of lands located in Sanpete County, State of Utah, so much water from either or both sources as can be captured in said existing works and is necessary to provide not more than 3,020 acre feet of water annually, measured where said water is diverted from the existing ditch at a point described as follows:

North 32° 14' west 1421.5 feet from the Southeast corner of Section 35, Township 13 South, Range 5 East, Salt Lake Meridian

with a priority date for said appropriation of 1869.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the right of the Defendant Cottonwood-Gooseberry Irrigation Company to the use and benefit of the waters above described be and the same is hereby quieted as against the Plaintiffs and each of them and all persons claiming by, through or under them; and said Plaintiffs and each of them be and they are hereby prohibited and enjoined from interfering with said Defendant's right to use such waters and its right to maintain and operate its existing system of feeder canals, storage reservoirs, and other existing facilities for the transmountain diversion of such waters into Sanpete Valley.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Application for a change of diversion filed by Defendant Cottonwood-

Gooseberry Irrigation Company with the State Engineer of the State of Utah, numbered a-4448, be and the same is hereby approved; and said Defendant is hereby authorized and permitted to divert the waters hereby awarded to it at a point on its canal leading from said reservoir located at a point north 32° 14' west 1421.5 feet ~~North~~ from the Southeast corner of Section 35, Township 13 south, Range 5 East, Salt Lake Meridian into a natural channel tributary of Gooseberry Creek and thereafter to re-divert said waters from the natural channel at a point near the tunnel drilled through the mountain, so as to cause said waters to flow from said natural channel into and through said tunnel into Sanpete Valley; subject, however, to the following conditions:

(1) Defendant shall install water measuring devices of a type approved by the State Engineer at the point where the water is taken from Defendant's canal and discharged into the natural channel and again at or near the tunnel, as shall be designated by the State Engineer.

(2) No greater quantity of water shall be permitted to be re-diverted through the tunnel than is diverted into natural channel tributary to Gooseberry Creek from Defendant's canal; but said Defendant shall be charged with any channel losses from conveyance in the natural stream and to the tunnel.

(3) The total quantity of water to which Defendant is entitled shall be limited in any year to a total of not more than 3,020 acre feet measured at the point where the water from Defendant's canal is discharged into the said natural channel, less any channel losses referred to in sub-paragraph 2.

(4) The diversion shall be subject to measurement and distribution by the duly appointed Water Commissioner.



(5) The section of canal which will thereby be abandoned by reason of such change shall, under the direction of the State Engineer, be either filled in or broken at such points as will allow water to flow into the natural drainage tributary to the Price River.

4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Cottonwood-Gooseberry Irrigation Company be and it is hereby awarded its costs herein incurred.

Dated this 7th day of March, 1966.

Maurice Harding  
Maurice Harding, Judge.